

## LICENSING ACT 2003 - DISAPPLICATION OF DPS REQUIREMENTS GUIDANCE NOTES

### **What type of premises can disapply the designated premises supervisor (DPS) provisions?**

Where premises are selling alcohol the Licensing Act 2003 allows for the mandatory requirement to have a designated premises supervisor (DPS) to be disappplied in relation to premises licences held by 'community' type premises.

These are usually

- (a) a church hall, chapel hall or other similar building, or
- (b) a village hall, parish hall, community hall or other similar building.

### **How will you decide whether or not my premises are a community type?**

Where it is not clear we will look at premises on a case-by-case basis. The main consideration in most cases will be how the premises are mainly used. If they are genuinely made available for community benefit most of the time, and accessible by a broad range of people and sectors of the local community for purposes which benefit the community as a whole, the premises will be likely to meet the definition.

This could include educational premises, such as school halls, but only where they are genuinely and widely used for the benefit of the community as a whole, and not just for that particular school.

Community premises under this definition will usually be multi-purpose, with a variety of activities taking place in them, such as playschools, senior citizens' clubs, indoor sports, youth clubs and public meetings.

Where school and private halls are mainly hired out to the public for private purposes, this will not normally be enough to qualify as 'community premises'. We would need to see evidence of any other uses that may benefit the local community. We are required to consider the nature of the premises themselves, as reflected in their main use, and not only at the usefulness of the premises for members of the public for private purposes.

If the use of the premises is dependent on membership of an organisation, this generally suggests the premises are not 'community premises'. The premises would need to show they have a multi-purpose use that is available to members of the community as outlined above.

### **What does "disapplication" mean?**

Section 19 of the Licensing Act makes it a mandatory condition, in any premises authorised for the sale of alcohol, that there must be no supply of alcohol under the licence when either:

- i) there is no DPS in respect of the licence, or
- ii) where the DPS does not hold a current personal licence.



In addition, it is a mandatory condition that every supply of alcohol must be made, or authorised by, a personal licence holder.

Whenever the mandatory conditions are disapplied an alternative mandatory condition will automatically apply instead. The effect of this alternative condition will be that responsibility for authorising sales of alcohol would fall on the premises licence holder itself, which will be the committee or board of individuals responsible for the management of the premises.

These individuals will be required to undertake the responsibilities that would normally be undertaken by a DPS. Provided the premises licence holder (i.e. the committee) had properly authorised the sale of alcohol, for example in written form through a hire agreement, an organisation or hirer using these premises for the sale of alcohol under the authority of the premises licence would not be required to obtain a personal licence.

There is no automatic disapplication of the conditions in respect of any premises. A management committee of a community, church or village hall that seeks the removal of the conditions from an existing licence, or wishes to apply for a licence that does not include them will need to apply to us for the conditions to be removed, and have the alternative condition imposed instead. This may be done either as a part of a new application, or as a separate application to vary the licence to disapply the DPS provisions.

### **In making an application to vary my licence to disapply the DPS provisions what do I need to produce?**

An applicant must produce:

1. A completed application form;
2. Any documents (if available) which identify the premises and how it is managed;
3. The appropriate fee and,
4. You must also submit the premises licence (or the appropriate part of that licence), or if that is not practicable, a statement of the reasons for the failure to provide the licence (or part).

### **Who do I serve the application on?**

One copy of the application to the Licensing Team at Derby City Council and one copy to Derbyshire Constabulary.

### **What happens next?**

The application form requires you to say how the premises is managed, its committee structure and how the supervision of alcohol sales is to be ensured in different situations (e.g. when the hall is hired to private parties) and how responsibility for this is to be determined in individual cases and discussed and reviewed within the committee procedure in the event of any issues arising.

The application form requires community premises to submit copies of any constitution or other management documents with their application and that they provide the names of their key officers e.g. the Chair, Secretary, Treasurer.

Where the management arrangements are not as clear, we will ask for further details to confirm that the management board or committee is properly constituted and accountable before taking a decision on whether to grant the application. This is dependent on the views of the Police – see below. You are strongly advised to



contact the Licensing Team to discuss your individual case before submitting your application.

When you submit your completed form and the fee and relevant documents, you must provide a copy to Derbyshire Police at the same time. The police then have 14 days to make a representation to us.

If the police issue a notice seeking the refusal of the application to remove the usual mandatory conditions, we must hold a hearing in order to reach a decision on whether to grant the application.

Following the grant of the application the management committee is strongly advised to notify us if there are key changes in the committee's composition e.g. to the Chair, Secretary, Treasurer and to submit a copy to the Chief Officer of Police. A failure to do so may form the basis of an application to review the premises licence, or be taken into account as part of the consideration of such a review application.

### **Once removed can the mandatory conditions be re-imposed?**

Where a premises licence has had the usual mandatory conditions removed, they may be reinstated if concerns arise over the promotion of any of the licensing objectives. In such a case, an interested party, such as a local resident or a responsible authority, such as the police may apply to us for a review of the licence.

A hearing will follow a review application and we, as the licensing authority may reinstate the DPS requirements if we think it necessary for the promotion of any of the licensing objectives.

### **How will you approach “community” premises in the event of offences under the Licensing Act?**

The management board or committee will remain the premises licence holder and will be collectively responsible for ensuring compliance with licence conditions and the law.

The hirer should be clearly identified as having responsibility for matters falling within his or her control, usually by means of a contract of hire between the hirer and the premises licence holder, such as events held under Temporary Event Notices.

We recommend hirers are provided with a written summary of their responsibilities in relation to the sale of alcohol. This may help demonstrate the management committee has taken adequate steps to avoid liability to prosecution if a licensing offence is committed.

